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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92060328
Party	Plaintiff L.A. Gem and Jewelry Design, Inc.
Correspondence Address	Milord A. Keshishian Milord & Associates, P.C. 10517 West Pico Boulevard Los Angeles, CA 90064 UNITED STATES uspto@milordlaw.com
Submission	Other Motions/Papers
Filer's Name	Milord A. Keshishian
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Signature	/Milord A. Keshishian/
Date	05/28/2016
Attachments	LAR08-061T Motion to Amend - Final.pdf(26008 bytes )

**TRADEMARK APPLICATION**  
**Ref. No. LAR08-061T**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**  
**BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re Trademark Registration No.: 3,811,074  
Filed: May 13, 2009  
Mark: LOVE IS FOREVER (stylized)

L.A. GEM AND JEWELRY DESIGN, INC.,	)	Cancellation No. 92060328
	)	
Petitioner,	)	
	)	
v.	)	
	)	
SOUKI MANUFACTURING, INC.	)	
	)	
Respondent.	)	
	)	
	)	
	)	

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**PETITIONER’S MOTION FOR LEAVE TO FILE**  
**AMENDED PETITION TO CANCEL**

Commissioner for Trademarks  
BOX TTAB  
P.O. Box 1451  
Arlington, VA 22313-1451

L.A. GEM & JEWELRY DESIGN, INC. (“LA Gem” or “Petitioner”) moves the Trademark Trial and Appeal Board (the “Board”) for an order permitting it to file an Amended Petition to Cancel, pursuant to Fed.R.Civ.P. 15(a), 37 C.F.R. § 2.107, and TBMP § 507.02, to amplify and more specifically allege the grounds for cancellation of SOUKI MANUFACTURING, INC.’s (“Souki” or “Respondent”), above-captioned registration, on the ground that Souki lacked a bona fide intent to use the mark in United States commerce.

Pursuant to Fed.R.Civ.P. 15(a), leave to amend shall be freely given when justice so requires. The Board liberally grants leave to amend pleadings at any stage of a proceeding when justice so requires, unless entry of the proposed amendment would violate settled law or be prejudicial to the rights of the adverse. TBMP § 507.02. See, for example, *Polaris Industries v. DC Comics*, 59 USPQ2d 1789 (TTAB 2001); *Boral Ltd. v. FMC Corp.*, 59 USPQ2d 1701 (TTAB 2000).

By allowing Petitioner to amend its Petition to Cancel, the Board is permitting full adjudication of the merits of this dispute. See, Beth A. Chapman, *TIPS FROM THE TTAB: Amending Pleadings: The Right Stuff*, 81 Trademark Rep. 306 (1991). (“The fact that the adverse party may be prejudiced as a result of the delay to the proceedings is generally outweighed by the principal that there should be full adjudication.”). Petitioner submits that permitting it to amend its Petition to Cancel will not prejudice Respondent and that this Motion is timely because the discovery period is still open. TBMP § 507.02(a). Further, grounds for the new claim were learned during discovery. TBMP § 507.02(b). See *Karsten Manufacturing Corp. v. Editoy AG*, 79 USPQ2d 1783, 1786 (TTAB 2006) (motion for leave to amend pleading granted because ground for new claim was learned during discovery). In response to LA Gem’s Requests for Production, Respondent failed to produce any evidence of a *bona fide* intent to use the mark in the United States.

A copy of the proposed Amended Petition to Cancel pursuant to TBMP § 507.01 is attached as Exhibit 1, wherein the primary changes from the original petition are the addition of a claim for cancellation based on lack of *bona fide* intent to use the mark in United States commerce pursuant to 15 U.S.C. § 1126 (see ¶¶ 5-6 of Exhibit 1). The change relates to Petitioner’s already asserted ground’s for cancellation, namely, failure to use the mark in United

States commerce.

Wherefore, Petitioner respectfully requests that the Board grant this Motion for leave to file the attached Amended Petition to Cancel.

Dated: May 28, 2016

Respectfully submitted,

MI LORD & ASSOCIATES, PC

/Milord A. Keshishian/

Milord A. Keshishian, Esq.

Attorneys for Petitioner

L.A. GEM AND JEWELRY DESIGN, INC.

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# EXHIBIT 1

**TRADEMARK APPLICATION**  
**Ref. No. LAR08-061T**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**  
**BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re Trademark Registration No.: 3,811,074  
Filed: May 13, 2009  
Mark: LOVE IS FOREVER (stylized)

L.A. GEM AND JEWELRY DESIGN, INC.,	)	Cancellation No. 92060328
	)	
Petitioner,	)	
	)	
v.	)	
	)	
SOUKI MANUFACTURING, INC.	)	
	)	
Respondent.	)	
	)	
	)	
	)	

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**AMENDED PETITION TO CANCEL REGISTRATION**

Commissioner for Trademarks  
BOX TTAB  
P.O. Box 1451  
Arlington, VA 22313-1451

Petitioner L.A. Gem and Jewelry Design, Inc. aka LA Rocks (“LA Rocks”), is a corporation organized and existing under the laws of California, having its principal place of business at 659 South Broadway, 7<sup>th</sup> Floor, Los Angeles, California 90014, believing that it is and will continue to be damaged by U.S. Registration No. 3,811,074 (“Registered Mark”), and hereby petitions for cancellation of the same.

As grounds for this Petition for Cancellation, it is alleged that:

1. On May 13, 2009, Respondent filed an application to register the trademark LOVE IS FOREVER on the Principal Register for use in connection with “key rings of precious metal; ornaments, namely, earrings, precious metal insignias, precious metal badges, precious metal medals, tiepins, necklaces, bracelets, pendants, jewelry brooches, medals, rings to wear on finger, medallions; cuff links; clocks and watches, namely, wristwatches, table clocks, watches for carrying in pockets, clocks for vehicles, stop watches, wall clocks, alarm clocks,” in International Class 014. The Registration was issued under Section 66(a) of the United States Trademark Act.

2. To the best of Petitioner’s knowledge, the name and address of the current owner of the Registered Mark is: SOUKI MANUFACTURING, INC., 326-6 SAKAMOTO-CHO, HODOGAYA-KU, KANAGAWA, 240-0043, JAPAN, email: mina-csj@nifty.com.

3. On May 19, 2014, Petitioner filed a Use Based application to register the trademark LOVE IS FOREVER on the Principal Register, Serial No. 86/285,762, for use in connection with bracelets, earrings, jewelry, necklaces, pendants, rings, and women's jewelry, in International Class 014.

4. Petitioner has invested a great deal of time, money and effort in promoting Petitioner’s business and the professional quality of its goods, and continues to spend substantial amounts of time and money in the promotion of the same.

5. Upon information and belief, Registrant at the time it filed its application did not have a *bona fide* intent to use the LOVE IS FOREVER mark on the goods identified in the Registration, including, but not limited to, “key rings of precious metal; ornaments, namely, earrings, precious metal insignias, precious metal badges, precious metal medals, tiepins, necklaces, bracelets, pendants, jewelry brooches, medals, rings to wear on finger, medallions;

cuff links; clocks and watches, namely, wristwatches, table clocks, watches for carrying in pockets, clocks for vehicles, stop watches, wall clocks, alarm clocks.”

6. As Registrant did not at the time of filing its application have a *bona fide* intent to use the LOVE IS FOREVER mark in connection with the goods listed in the Registration, the Registration is void *ab initio* pursuant to 15 U.S.C. § 1126 (Trademark Act Section 44(e)).

7. Alternatively, Registrant has either never used the Registered mark in commerce, or completely ceased using the Registered mark, in connection with the goods identified in the Registration, for a period of at least three consecutive years.

8. Upon information and belief, Registrant does not sell goods under the mark on its website in connection with the claimed goods. Registrant’s website <soukimfg.com>, where the goods claimed in the Registration would likely be found, has no mention whatsoever of the goods or where the goods can be purchased.

9. Upon information and belief, Registrant has either never actively used the mark in question, or has permanently ceased all use of the Registered Mark in connection with “key rings of precious metal; ornaments, namely, earrings, precious metal insignias, precious metal badges, precious metal medals, tiepins, necklaces, bracelets, pendants, jewelry brooches, medals, rings to wear on finger, medallions; cuff links; clocks and watches, namely, wristwatches, table clocks, watches for carrying in pockets, clocks for vehicles, stop watches, wall clocks, alarm clocks,” with no intention to resume use of the Registered mark.

10. Upon information and belief, by reason of the facts set forth above, and that the Registrant has failed to use the mark for at least three consecutive years, Registrant had abandoned the Registered Mark within the meaning of 15 U.S.C. §§ 1064(3) and 1127.

11. Petitioner has been damaged and will continue to be damaged if the Registered



Mark is permitted to remain on the Principal Register because the Registered Mark stands as a bar to Petitioner's ability to federally register and protect its LOVE IS FOREVER mark for the goods identified above.

12. Upon information and belief, by reason of the facts set forth above, the Registrant lacked a *bona fide* intent to use the mark in connection with the goods listed in the Registration, making the mark void pursuant to 15 U.S.C. § 1126 (Trademark Act Section 44(e)), and has failed to use the mark for at least three consecutive years, thus abandoning the Registered Mark within the meaning of 15 U.S.C. §§ 1064(3) and 1127.

13. By virtue of the foregoing, if the Registered Mark is permitted to remain on the Principal Register with all the rights and privileges conferred on it by its status as a Principal Registration, Petitioner will be damaged, including its inability to secure a registration for its LOVE IS FOREVER mark, and Registrant will enjoy unlawful gain and advantage to which it is not entitled under the Lanham Act 15 U.S.C. § 1051, *et seq.*

### CONCLUSION

14. Petitioner is damaged and will continue to be damaged because the continued existence of such improper Registration stands as a bar to Petitioner's ability to federally register its LOVE IS FOREVER mark, and casts a cloud upon Petitioner's right to enjoy the free and exclusive use thereof in connection with the sale of its goods.

15. WHEREFORE, Petitioner respectfully requests that this Petition be granted and

that Registration No. 3,811,074 be cancelled pursuant to 15 U.S.C. § 1064.

Dated: May 28, 2016

Respectfully submitted,

MILORD & ASSOCIATES, PC

/Milord A. Keshishian/

Milord A. Keshishian, Esq.

Attorneys for Petitioner

L.A. GEM AND JEWELRY DESIGN, INC.

10517 West Pico Boulevard

Los Angeles, CA 90064

Telephone: (310) 226-7878

Facsimile: (310) 226-7879

### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that, on May 28, 2016, I caused a true and correct copy of the foregoing **MOTION TO FOR LEAVE TO FILE AMENDED PETITION TO CANCEL** sent via First Class International Mail, postage prepaid, and via email, to Registrant's Correspondence of Record as follows:

Souki Manufacturing, Inc.  
326-6 Sakamoto-cho  
Hodogaya-ku, Yokohama-shi  
Kanagawa 240-0043  
Japan  
Email: [mina-csj@nifty.com](mailto:mina-csj@nifty.com)

/Milord A. Keshishian/  
Milord A. Keshishian  
10517 West Pico Boulevard  
Los Angeles, CA 90064  
Telephone: (310) 226-7878  
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